

In re Appln. of Savicki, Alan F.  
Application No. 10/049,319  
Attorney Docket No. 492.216

### **Remarks**

Reconsideration and reexamination of the outstanding rejection of claims 1-17 is respectfully requested in view of this amendment and the following remarks. Claims 1-17 remain in this case. Claims 1-10, 16 and 17 have been amended. No new matter has been added by way of these amendments. Applicant believes that the application is now in condition for allowance. Accordingly, favorable reconsideration in light of the following remarks is respectfully requested.

### **The §112 Rejection**

Claims 1-17 stand rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The Examiner stated that there was no disclosure in the application for the description of the slider as having a separator "fixed" relative to the positions of the first and second sidewalls of the slider. In response, applicants have made amendments to the claims by striking-out the previously introduced language to effectively bring the claims back to their originally-filed condition. In addition and as is discussed in detail below, the claims have been further amended to include structural limitations in the fastening strip upper flange region to further define the invention.

### **The §102(b) Rejection**

Claims 1-10, 13, 14, 16 and 17 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,020,194 to Herrington et al.

Herrington et al. (at Fig. 15) is said to teach a closure device, comprising: first and second interlocking fastening strips arranged to be interlocked over a predetermined x axis between first and second ends by arrowhead profile elements, the fastening strips being secured together at the first and second ends, a slider 11 slidably disposed on the fastening strips for movement between the first and second ends, the slider facilitating occlusion of the fastening strips when moved towards the first end, the slider including a fixed separator 11f between the slider sidewalls for facilitating the deocclusion of the fastening strips when the slider is moved towards the second end; the first and second fastening strips include first flange and second flange portion 19, 20 which extend inward toward the opposite fastening strip; U and there are first and second altered flange portions defined by the notches 15b, 16b near the ends of the first

and second fastening strips that receive the separator 11. As to claims 5-8 and 10, the Examiner reasoned that the method steps of "flattening" and "removing" do not create a finished article of a different structure than that shown by Herrington et al. and the device of Herrington et al. is said to be fully capable of having the final product structure created by a flattening or removal of material.

Applicant submits that the reference does not teach each and every element of the claimed invention. As is apparent from Figures 3 and 15 of Herrington et al., the flanges 19 and 20 (each referred to as a "track structure" in Herrington, col. 5, line 10) are located at the upper portion of the fastening strips 15 and 16 (the strips) which in turn include closing elements 17 and 18 (the rib and groove elements), respectively. Each upper flange 19, 20 has a first length that extends along a vertical z axis and a second length that extends inwardly along a transverse y axis. The separate 11f acts upon the respective vertically upward extending first length portions of the flanges 19 and 20 in order to deocclude the fastening strips. In contrast, in the claimed closure device, the first and second altered flange portions are located at the second length portions of the respective first and second upper flange portions, the second length portions extending inwardly along the transverse y axis, thereby leaving undeformed the upwardly extending first length portions of the respective first and second upper flange portions. As is expressly claimed in amended claim 9, the altered flange portions do not allow the separator to act upon the flange portions in a manner sufficient to separate the fastening strips. Support for this language is found in the specification at page 7, lines 11-14. It is believed that the present amendments to the claims define a product that is structurally distinct from that as taught by Herrington et al.

#### **The §103(a) Rejection**

Claims 11 and 12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,020,194 to Herrington et al. in view of U.S. Patent No. 5,664,299 to Porchia et al.

Herrington et al. is said to teach the art as stated above but the closure elements are not both U-channel elements. It was reasoned, however, that Porchia et al. taught that this feature was conventional and therefore it would have been obvious to modify the closure device of Herrington et al. so that the closure elements are both U-channel elements. Applicant submits that even if Porchia et al. teaches the art as assigned by the Examiner, the secondary reference does not cure the deficiencies of Herrington as stated above.

Claim 15 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,020,194 to Herrington et al. in view of U.S. Patent No. 5,007,143 to Herrington.

Herrington '194 is said to teach the art as stated above but the closure elements are not rolling action type elements. It was reasoned, however, that Herrington '143 taught that this feature was conventional and therefore it would have been obvious to modify the closure device of Herrington '194 so that the closure elements are rolling action type elements. Applicant submits that even if Herrington '143 teaches the art as suggested by the Examiner, the secondary references do not cure the deficiencies of Herrington '194 as stated above.

Claims 1-10, 13, 14, 16 and 17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,871, 281 to Stolmeier et al. in view of U.S. Patent No. 6,257,763 to Stolmeier et al.

Stolmeier '281 (Figures 3-7) is said to teach a closure device, comprising: first and second interlocking fastening strips arranged to be interlocked over a predetermined x axis between first and second ends by arrowhead profile elements, the fastening strips being secured together at the first and second ends; a slider 21 shown in Figures 6 and 7 as slidably disposed on the fastening strips for movement between the first and second ends, the slider facilitating occlusion of the fastening strips when moved towards the first end, the slider including a separator 34 between sidewalls for facilitating the deocclusion of the fastening strips when the slider is moved towards the second end; and the first and second fastening strips include first flange and second flange portions which extend inwardly toward the opposite fastening strip; and first and second altered flange portions defined by the notches 37, 38 near the ends of the first and second fastening strips that receive the separator 34.

Stolmeier '281 is said to also disclose that the tab can be molded or separately attached such as to project downward into the notch or even into the space between the complementary rib and groove 18P and 19G as shown in Figs. 6 and 7. The difference is that it is not stated that the separator shown in Figures 6 and 7 as molded or separately attached so as to project downward into the notch or space between the complementary rib and groove is also "fixed." However, Stolmeier '763 is said to teach a slider structure for a slide fastener of a compartment wherein it is desirable to have the separator 36 fixed so as to provide structure that maintains its configuration so as to more easily open the fastener. The Examiner reasoned that it would have been obvious to modify the fastener of Stolmeier '281 so that the separator shown in Figures 7

and 7 as molded or separately attached so as to project downward into the notch or space between the complementary rib and groove is also "fixed" in view of Stolmeier '763 teaching slider structure for a slide fastener of a compartment wherein it is desirable to have the separator fixed so as to provide structure that maintains its configuration so as to more easily open the fastener.

As noted above, these claims have been amended to delete, without prejudice, the "fixed" configuration of the separator. It is believed that the claimed disclosure is nevertheless not rendered obvious as suggested by the Examiner. As described in col. 2, line 49, to col. 3, line 5 and illustrated in Figures 2, 4 and 7 of Stolmeier et al. '281, the slider 21 has elongated flexible strips 18 and 19 that include base flanges 18B and 19B and upper flange edges 18T and 19T. When the slider of the plastic bag is at the opening position as shown in Figure 7, tab 34 with pointed projection 36 separates the two flexible strips 18 and 19 so that groove 19G does not interlock with flanged head 18H. When the slider is at the far right bag-closed top position and groove 19G is interlocked with flanged head 18H, tab 34 has moved into notches 37 and 38 as illustrated in Figures 1-4. As shown in Figures 5 and 5, notches 37 and 38 on the strips are structurally and functionally different that the "altered flange portions" of the claimed closure device which are located on the upper ends of their respective fastening strips. The claimed closure device does not require movement of separator into a notch structure. Instead, the altered flange portion is a modification of an inwardly extending second length of the upper flange portion so that the separator does not exert the same separating force onto the fastening strips. Like Herrington, Stolmeier et al. '281 teaches to notch the upper flange portions in a manner that removes substantially all the material of the upper flanges above the closure elements, including both the upwardly extending first length portion and inwardly extending second length portion of the respective upper flange portions. As is seen in Figs. 7 and 11 of Stolmeier et al. '281, the separator has a wide point that extends well beyond the normal occluded position of the vertically upright length portions of the upper flanges. Thus, without the provision of the notch in both the vertically upwardly extending first length portion and inwardly extending second length portion of the respective upper flange portions, the separator would still act to deocclude the fastening strips.

Applicants further submit that even if the Stolmeier et al. '763 teaches the art as suggested by the Examiner, the secondary reference does not cure the deficiencies of Stolmeier et al. '281.

Claims 11-12 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,871,281 to Stolmeier et al. in view of U.S. Patent No. 6,257,763 as applied above to claim 1 and further in view of U.S. Patent 5,664,299, Porchia et al.

Stolmeier et al. is said to teach a closure device as stated above but where the closure elements are not both U-channel elements. It was reasoned however that Porchia et al. taught that it is conventional to utilize interengaging U-channel elements so as to better secure the fastening strips together and therefore it would have been obvious to modify the closure device of Stolmeier et al. so that the closure elements are both U-channel elements.

Applicant submits that even if Porchia et al. teaches the art as suggested by the Examiner, the secondary reference does cure the deficiencies of Stolmeier '281 as stated above.

Claim 15 stands rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,871,281 to Stolmeier et al. in view of U.S. Patent No. 5,007,143 to Herrington.

Stolmeier '281 is said to teach the closure device as stated above but with closure elements that are not rolling action type fastening strips. It was reasoned, however, that Herrington taught that it is conventional to utilize interengaging rolling action type elements so as to better secure the fastening strips together and therefore it would have been obvious to modify the closure device of Stolmeier et al. so that the closure elements are rolling action type elements.

Applicant submits that even if Herrington teaches the art as suggested by the Examiner, the secondary reference does not cure the deficiencies of Stolmeier et al. as stated above.

#### Conclusion

The application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Finally, while no fees are due, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 03 2270.

Respectfully submitted,

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